

Opinion 3-98
of the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law

Issued March 3, 1998

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule"), section 49(d)(3)(G), the Committee on the Unauthorized Practice of Law (the "Committee"), by a majority vote of a quorum of its members then present, approved the following opinion, at its meeting on February 27, 1998:
Procedure For Practice Pro Bono Publico Under Exception 49(c)(9)

Effective February 1, 1998, section 49(c)(9) of the Rule provides as follows concerning practice in the District of Columbia *pro bono publico*:

[49] (c) The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

9. Pro Bono Legal Services: Providing legal services pro bono publico in the following circumstances:
 - A. Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.
 - B. Where the person is a member in good standing of the highest court of any state, and is employed by the Public Defender Service, or is employed by or affiliated with a nonprofit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the nonprofit organization.
 - C. Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.

An attorney may practice under part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the nonprofit organization, or until admitted to the Bar, whichever first shall occur.

The purpose of the exception set forth in 49(c)(9) is to provide the broadest access to *pro bono* legal services, while serving the purposes of Rule 49 to protect the public from unlicensed legal practitioners. For this reason, entitlement to practice under the exception requires only the completion of a certificate that a person satisfies the requirements to practice under section 49(c)(9); neither an application nor a motion to appear *pro hac vice* in litigation is required. The certificate, a copy of which is appended to the Rule and attached hereto, is adequate to authorize practice under the *pro bono* exception both inside and outside of litigation.

Of course, any judge of the Superior Court or the Court of Appeals may require additional filings

for participation in any particular case. In such a circumstance, the limitation on the number of pro hac vice applications would not apply.

This staff of the Committee shall cause this opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

Done this 3rd day of March, 1998.